



May 4, 2015

Jim Rizzuto, President
Otero Junior College
1802 Colorado Avenue
La Junta, CO 81050-3346

Certified Mail
Return Receipt Requested
7012 1640 0000 0215 8139

RE: **Final Program Review Determination**
OPE ID: 00136200
PRCN: 201220527982

Dear President Rizzuto:

The U.S. Department of Education's (Department's) Chicago/Denver School Participation Team issued a program review report on December 5, 2013 covering Otero Junior College's (OJC) administration of programs authorized by Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. §§ 1070 et seq. (Title IV, HEA programs), for the 2010-2011 and 2011-2012. OJC's final response was received on March 14, 2014. A copy of the program review report (and related attachments) and OJC's response are attached. Any supporting documentation submitted with the response is being retained by the Department and is available for inspection by OJC upon request. Additionally, this Final Program Review Determination (FPRD), related attachments, and any supporting documentation may be subject to release under the Freedom of Information Act (FOIA) and can be provided to other oversight entities after this FPRD is issued.

Purpose:

Final determinations have been made concerning all of the outstanding findings of the program review report. The purpose of this letter is to: (1) identify liabilities resulting from the findings of this program review report, (2) provide instructions for payment of liabilities to the Department, (3) notify the institution of its right to appeal, (4) close the review and (5) notify OJC of a possible adverse action. Due to the serious nature of one or more of the enclosed findings, this FPRD is being referred to the Department's Administrative Actions and Appeals Service Group (AAASG) for its consideration of possible adverse action. Such action may include a fine, or the limitation, suspension or termination of the eligibility of the institution. Such action may also include the revocation of the institution's program participation agreement (if provisional), or, if the institution has an application pending for renewal of its certification, denial of that application. If AAASG initiates any action, a separate notification will be provided which will include information on institutional appeal rights and procedures to file an appeal.

This FPRD contains one or more findings regarding OJC's failure to comply with the requirements of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act) in Section 485(f) of the HEA, 20 U.S.C. §1092(f), and the

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Department's regulations at 34 C.F.R. §§668.41, 668.46, and 668.49. Because Clery Act findings do not result in financial liabilities, such findings may not be appealed. If an adverse administrative action is initiated, additional information about OJC's appeal rights will be provided under separate cover

Protection of Personally Identifiable Information (PII):

PII is any information about an individual which can be used to distinguish or trace an individual's identity (some examples are name, social security number, date and place of birth). The loss of PII can result in substantial harm, embarrassment, and inconvenience to individuals and may lead to identity theft or other fraudulent use of the information. To protect PII, the findings in the attached report do not contain any student PII. Instead, each finding references students only by a student number created by Federal Student Aid. The student numbers were assigned in Appendix A. Student Sample.

Record Retention:

Program records relating to the period covered by the program review must be retained until the later of: resolution of the loans, claims or expenditures questioned in the program review; or the end of the retention period otherwise applicable to the record under 34 C.F.R. §§ 668.24(e)(1), (e)(2), and (e)(3).

The Department expresses its appreciation for the courtesy and cooperation extended during the review. If the institution has any questions regarding this letter, please contact Jason Charlton at (312) 730-1695. Questions relating to any appeal of the FPRD should be directed to the address noted in the Appeal Procedures section of this letter.

Sincerely,



for Douglas Parrott
Division Director

Enclosure:
Final Program Review Determination Report (and appendices)

cc: Angela Benfatti, Financial Aid Administrator
Colorado State Board for Community Colleges
Higher Learning Commission
Department of Defense
Department of Veterans Affairs
Consumer Financial Protection Bureau

Prepared for
Otero Junior College

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Final Program Review Determination May 4, 2015

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A. Institutional Information

Otero Junior College
1802 Colorado Avenue
La Junta, CO 81050-3346

Type: Public

Highest Level of Offering: Associate's Degree

Accrediting Agency: North Central Association of Colleges and Schools

Current Student Enrollment: 1,449 (2013)

% of Students Receiving Title IV, HEA funds: 75% (2012-2013)

Title IV Participation, Postsecondary Education Participants System (PEPS):

	2012-2013
Federal Pell Grant (Pell)	\$2,959,921.00
William D. Ford Federal Direct Loan Program (Direct Loan)	\$2,008,881.00
Federal Supplemental Education Opportunity Grant (FSEOG)	\$33,432.00
Federal Work Study (FWS)	\$60,820.00

Default Rate FFEL/DL:	2011	23.3%
	2010	26.6%
	2009	29.6%

B. Scope of Review

The U.S. Department of Education (the Department) conducted a program review at Otero Junior College (OJC) March 26, 2012 to March 30, 2012. The review was conducted by Briget Jans and Michael Powers.

The focus of the review was to determine OJC's compliance with the statutes and regulations as they pertain to the institution's administration of the Title IV, HEA programs. The review consisted of, but was not limited to, an examination of OJC's policies and procedures regarding institutional and student eligibility, individual student financial aid and academic files, attendance records, student account ledgers, and fiscal records.

A sample of 15 files was identified for review from the 2010-2011 and 2011-2012 (year to date) award years. The files were selected randomly from a statistical sample of the total population receiving Title IV, HEA program funds for each award year. Appendix A lists the names and social security numbers of the students whose files were examined during the program review. A program review report was issued on December 5, 2013.

Disclaimer:

Although the review was thorough, it cannot be assumed to be all-inclusive. The absence of statements in the report concerning OJC's specific practices and procedures must not be construed as acceptance, approval, or endorsement of those specific practices and procedures. Furthermore, it does not relieve OJC of its obligation to comply with all of the statutory or regulatory provisions governing the Title IV, HEA programs.

C. Findings and Final Determinations

Resolved Findings

Findings 4 and 5

OJC has taken the corrective actions necessary to resolve findings 4 and 5 of the program review report. Therefore, these findings may be considered closed. Findings requiring further action by OJC are discussed below.

Findings with Final Determinations

The program review report finding(s) requiring further action are summarized below. At the conclusion of each finding is a summary of OJC's response to the finding, and the

Department's final determination for that finding. A copy of the program review report issued on December 5, 2013 is attached as Appendix B.

Finding 1. Incorrect Return of Title IV Funds

Citation:

When a recipient of Title IV grant or loan assistance withdraws from an institution during a payment period or period of enrollment in which the recipient began attendance, the institution must determine the amount of Title IV grant or loan assistance that the student earned as of the student's withdrawal date. 34 C.F.R. § 668.22(a)(1). The amount of Title IV grant or loan assistance that is earned by the student is calculated by determining the percentage of Title IV grant or loan assistance that has been earned by the student and applying this percentage to the total amount of Title IV grant or loan assistance that was disbursed (and that could have been disbursed) to the student, or on the student's behalf, for the payment period or period of enrollment as of the student's withdrawal date. 34 C.F.R. § 668.22(e)(1)(i) & (ii). The percentage of Title IV grant or loan assistance that has been earned by the student is equal to the percentage of the payment period or period of enrollment that the student completed as of the student's withdrawal date. 34 C.F.R. § 668.22(e)(2)(i). The total number of calendar days in a payment period or period of enrollment includes all days within the period, except that scheduled breaks of at least 5 consecutive days are excluded from the total number of calendar days in a payment period or period of enrollment and the number of calendar days completed in that period. 34 C.F.R. § 668.22(f)(2)(i).

A correctly calculated return of Title IV FSA funds must be paid no later than forty-five days after a participating institution has determined or should have determined that the student has withdrawn, been expelled or otherwise terminated his or her enrollment.

Noncompliance:

During the period under review, OJC regularly failed to count the number of days in the term correctly. OJC did not exclude the days when the institution was on break for five or more consecutive days. Because of this systemic issue, OJC incorrectly calculated the amount of Title IV funds to be returned.

Student #6 withdrew on March 17, 2011 during the spring 2011 semester. The scheduled start date was January 10, 2011 and ended on April 29, 2011. After excluding the period March 21 through March 25, 2011, a period of 5 days indicated as "Spring Break" on the institution's academic calendar, the actual days in the spring 2011 term is 105. In the R2T4 calculation the total days in the term is 110. This seems to be because OJC failed to exclude the 5 day break. Therefore, OJC incorrectly calculated the amount of Title IV funds to be returned on behalf of the student. Although the completion percentage is

incorrect due to the wrong number of days, the student still earned all of the aid they received; the percentage of the payment period went from 60.9% to 63.8% and therefore no liability is associated with this student.

Student #18 withdrew on November 7, 2011 during the fall 2011 semester. The scheduled start date was August 22, 2011 and ended on December 9, 2011. After excluding the period November 23 through November 27, 2011, a period of 5 days indicated as "Thanksgiving Vacation" on the institution's academic calendar, the actual days in the fall 2011 term is 105. In the R2T4 calculation the total days in the term is 110. This seems to be because OJC failed to exclude the 5 day break. Therefore, OJC incorrectly calculated the amount of the Title IV funds to be returned on behalf of the student. Although the completion percentage is incorrect due to the wrong number of days, the student still earned all of the aid they received; the percentage of the payment period went from 70.9% to 74.3% and therefore no liability is associated with this student.

Student #31 withdrew on November 9, 2011 during the fall 2011 semester. The scheduled start date was August 22, 2011 and ended on December 9, 2011. As stated previously, the actual total days in the fall 2011 term is 105. In the R2T4 calculation the total days in the term is 110. This seems to be because OJC failed to exclude the 5 day break. Therefore, OJC incorrectly calculated the amount of the Title IV funds to be returned on behalf of the student. Although the completion percentage is incorrect due to the wrong number of days, the student still earned all of the aid they received; the percentage of the payment period went from 72.7% to 76.2% and therefore no liability is associated with this student for this term. However, the student also withdrew the following term, on January 11, 2012. The scheduled start date was January 9, 2012 and ended on April 27, 2012. The actual total days in the spring 2012 term is 105 after excluding the period March 21 through March 24, 2010, a period of 5 days indicated as "Spring Break" on the institution's academic calendar. In the R2T4 calculation the total days in the term is 101. OJC incorrectly calculated the amount of Title IV funds earned by the student. For the spring 2012 term, the percentage earned by the student was calculated at 3.0%, when it should have been 2.9% and the student received \$1.39 more than he should have in a post-withdrawal disbursement.

During the review, the reviewers also discovered that a student attending OJC may take courses provided through Colorado Community College Online entirely or in combination with on-campus courses. While OJC is a part of the Colorado Community College system, the online courses did not share the same term periods as OJC's on-campus courses did. The online courses began a week after and ended two days after the on-campus courses for the fall term. For the spring term the on-campus courses began 14 days prior to and ended nine days before the online courses. Moreover, some of the online courses covered a shorter period of time within the term. With students being able to enroll in both online and on-campus courses simultaneously, OJC was not properly defining its academic year or academic term.

Although no instances of noncompliance affecting Title IV recipients were found by the reviewers, OJC's lack of procedures correctly defining terms and modules, and for clearly establishing a means of monitoring changes of enrollment status impacting R2T4 calculations, is of concern.

Required Action:

OJC must immediately establish and implement written procedures to ensure all funds are calculated accurately and within the timeframes established by federal regulations. A copy of those policies and procedures must be submitted in response to this report.

Due to the fact that several errors were identified in the statistical sampling and a seemingly systemic errors for identifying the number of days in a term and properly defining the institution's academic year, OJC must perform a file review of all students who withdrew or otherwise terminated attendance during the 2010-2011 and 2011-2012 award years. The information should be provided in an Excel spreadsheet, paper and electronic formats with the following data:

- 1) Student name*
- 2) Social security number*
- 3) Term begin and end date of the term that student withdrew*
- 4) Registration indicating what classes were on-line (if any) and what classes were on-campus (if any) for the term the student withdrew*
- 5) Withdrawal date*
- 6) Date the institution determined the student withdrew*
- 7) Amount of Title IV FSA funds disbursed or that could have been disbursed, by each program (Pell, Subsidized loan, Unsubsidized loan, etc.) and date of each disbursement*
- 8) Amount of required returns of Title IV FSA*
- 9) Amount and date of returns already paid to the Department by each program*
- 10) Difference between amount owed to the Department and amount already returned to the Department by each program*

A copy of this report must be submitted in electronic format (Excel spreadsheets) with supporting documentation including but not limited to official withdrawal forms, R2T4

OJC's Response:

OJC conducted a file review of all students who withdrew during the 2010-2011 and 2011-2012 award years by recalculating the amount of money that should have been

returned to the Department, students and their lenders. OJC provided the Department with Excel spreadsheets containing the data along with the supporting documentation.

OJC agrees correct number of days were not used in the R2T4 calculation for the 2010-2011 and 2011-2012 Fall terms. However, OJC stated the correct number of days was used for the spring and summer terms in both the 2010-2011 and 2011-2012 academic years. OJC provided documentation that courses were scheduled for the Law Enforcement Training Academy during the spring term and therefore, there was not a break of five or more days during the spring terms. Similarly, there not a break during the summer terms that would require days to be omitted in a R2T4 calculation.

In response to the Department's concerns regarding students taking courses provided through Colorado Community College System (CCCS) entirely or in combination with OJC courses, the institution stated their procedures are in line with the hierarchy of requirements beginning with Title IV regulations and procedures defined by the CCCS Return of Title IV policy. OJC submitted the procedures outlined to verify OJC is in compliance and does have procedures that correctly define terms and modules, and do monitor changes of enrollment that impact R2T4 calculations.

Final Determination:

The Department agrees OJC did not have any breaks during the summer terms and with the documentation OJC provided in its response, the institution did not have a break of five or more days in the 2010-2011 and 2011-2012 spring terms that would require the institution to exclude from the R2T4 calculations.

Additionally, OJC has submitted extensive documentation that displays the institution competency in correctly defining its terms and modules according to the CCCS hierarchy that many other public Colorado institutions follow and appears to be in line with the Department's requirements.

The Department reviewed a sample of the withdrawal calculations for the 2010-2011 and 2011-2012 award years for accuracy. Upon review, the Department did not find any errors in the sample students and can fairly assume the information provided by the institution is correct. OJC's incorrect calculation of R2T4 funds resulted in too much aid being sent back to the Department, causing unnecessary cost to the student affected.

OJC is liable for the financial loss to the Department in the form of cost of funds that resulted from its failure to properly calculate Return of Title funds. Because the institution refunded more than what was necessary to the Department, there is no further liability for this finding.

OJC is directed to review the above-cited regulatory provisions to ensure strict compliance with the requirements thereof.

Finding # 2: Crime Awareness Requirements Not Met - Required Policy Statements Inadequate/Omitted from Annual Security Report (ASR) and Failure to Distribute the ASR as a Comprehensive Document

Citation:

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act) and the Department's regulations require that all institutions that receive Title IV, HEA funds must, by October 1 of each year, publish and distribute to its current students and employees through appropriate publications and mailing, a comprehensive Annual Security Report that contains, at a minimum, all of the statistical and policy elements enumerated in 34 C.F.R. §668.46(b).

The ASR must be prepared and actively distributed as a single document. Acceptable means of distribution include U.S. Mail, campus mail, hand delivery, or by posting the ASR on the institution's website. If an institution chooses to distribute its report by posting to an internet or intranet site, the institution must, by October 1 of each year, distribute a notice to all students and employees that includes a statement of the report's availability and a link to its exact electronic address, a description of its contents, as well as an advisement that a paper copy will be provided upon request. 34 C.F.R. §668.41(e)(1). These regulations also require institutions to provide a notice containing this information to all prospective students and employees. This notice must also inform interested parties about how to obtain a paper copy of the ASR. 34 C.F.R. §668.41(e)(4).

An institution's ASR must include statistics for incidents of crimes reported during the three most recent calendar years. The covered categories include criminal homicide (murder and non-negligent manslaughter), forcible and non-forcible sex offenses, robbery, aggravated assault, burglary, motor vehicle theft, and arson. Statistics for certain hate crimes as well as arrest and disciplinary referral statistics for violations of certain laws pertaining to illegal drugs, illegal usage of controlled substances, liquor, and weapons also must be disclosed in the ASR. These crime statistics must be published for the following geographical categories: 1) on campus; 2) on-campus student residential facilities (as a subset of category # 1); 3) certain non-campus buildings and property; and, 4) certain adjacent and accessible public property. 34 C.F.R. § 668.46(c)(1).

In addition, the ASR must include several policy statements. These disclosures are intended to inform the campus community about the institution's security policies, procedures, and the availability of programs and resources as well as channels for victims of crime to seek recourse. In general, these policies include topics such as the law enforcement authority and practices of campus police and security forces, incident reporting procedures for students and employees, and policies that govern the

preparation of the report itself. Institutions are also required to disclose alcohol and drug policies and educational programs. Policies pertaining to sexual assault education, prevention, and adjudication must also be disclosed. Institutions also must provide detailed policies of the issuance of timely warnings and emergency notifications as well as its emergency response and evacuation procedures. All required information referenced in 34 C.F.R. §668.46(b) must be published in the ASR. With the exception of certain drug and alcohol program information, cross referencing to other publications is not sufficient to meet the publication and distribution requirements of the Act. 34 C.F.R. §668.46(b).

Finally, each institution must also submit its crime statistics for inclusion in the Department's "Campus Safety and Security Data Analysis Cutting Tool." 34 C.F.R. §668.41(e)(5).

Noncompliance:

OJC violated multiple provisions of the Clery Act. Specifically, the College failed to publish an accurate and complete 2011 ASR and to distribute it to current students and employees in the required manner. The Department's analysis indicates omitted and/or inadequate disclosures in the following areas:

- *A statement of policy regarding the issuance of timely warnings to the campus community regarding the occurrence of Clery-reportable crimes that pose a serious and ongoing threat;*
- *A statement of policy regarding the College's policies and procedures governing the publication of the annual disclosure of crime statistics;*
- *A statement of policy regarding the institution's campus safety programs designed to prevent sex offenses. The statement must include a description of the institution's educational programs designed to promote awareness of rape, acquaintance rape, and other forcible and non-forcible sex offenses. It must also include the procedures that a victim/survivor should adhere to when a sex crime does occur and address the following topics:*
 - *who should be contacted;*
 - *to whom the alleged offense should be reported;*
 - *the student's option to notify appropriate law enforcement authorities;*
 - *a statement that institutional personnel, if requested, will assist the student in notifying these authorities;*
 - *the importance of evidence preservation for the purposes of proving the commission of a crime;*

- existing on and off-campus counseling, mental health, or other student services that are available for victims of sex offenses;
 - notification that the institution will change a victim's academic and or living situation after an alleged sex offense, if an accommodation is reasonably available;
 - procedures for campus disciplinary action in cases of an alleged sex offense including a clear statement that the accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding; and,
 - a statement that both the accused and the accused must be informed of the outcome of such a proceeding and an explanation of the sanctions that may be imposed following a finding of responsibility by a campus judicial body regarding rape, acquaintance rape, or other forcible or non-forcible sex offense case.
- A statement advising the campus community where state law enforcement agency information concerning registered sex offenders may be obtained; and
 - A statement of policy regarding the institution's missing student notification procedures that will apply in any case where a student who resides in on-campus student housing facility is determined to have been missing for 24 hours.

Although OJC's ASR does state that all alleged on-campus sexual assaults will be referred to local authorities, the Department notes that the College's policies regarding campus sexual assaults did not include certain disclosures that are required by 34 C.F.R. §668.46(b)(11), sometimes referred to as the "Campus Sexual Assault Victims' Bill of Rights."

The extent of the omissions noted above indicate a general failure on the part of the institution to publish an accurate and complete ASR and to otherwise comply with the requirements of the Clery Act. For these reasons, the Department also finds that OJC's 2011 ASR was so lacking in required content that it substantially failed to distribute a comprehensive 2011 ASR in accordance with Federal regulations. Furthermore, OJC also failed to notify prospective students and employees about the availability of the 2011 ASR in the required manner. The distribution and notification exceptions constitute separate violations of the Clery Act.

Failure to publish an accurate and complete ASR, containing all required policy, procedural and statistical information and to actively distribute the report as a comprehensive document to all current students and employees in accordance with Federal regulations deprives the campus community of important security information that can empower its members to make informed decisions and play an active role in their own safety and security.

Required Action:

As a result of this violation, OJC must review and revise its existing internal policies and procedures that govern the preparation, publication, and distribution of the ASR and develop and implement any new policies and procedures as needed to ensure that all campus security operations at OJC will be carried out in accordance with the Clery Act going forward. The new procedures also must specifically articulate how prospective students and employees will be notified of the ASR's availability.

Using its new and revised policies as a guide, OJC must prepare and publish an accurate and complete ASR that includes all of the statistical disclosures and policy, procedure and programmatic information required by 34 C.F.R. § 668.46(b). A copy of the institution's new and revised policies and procedures and its draft ASR must accompany OJC's response to this program review report. Once the new ASR is evaluated by the review team for accuracy and completeness, OJC will be required to actively distribute it to all current students and employees by October 1, 2013. Furthermore, the College must submit its 2010-2012 Annual Fire Safety Reports with its official response. If OJC did not publish and/or distribute any of these reports, the College must clearly state those facts. Please be advised that OJC must not produce any new documents for any past periods for the purpose of complying with this demand for document production. The College also must submit its draft 2013 AFSR along with its response for the Department's review

Finally, OJC will be required to provide documentation to the Department evidencing the distribution as well as a certification statement attesting to the fact that the materials were distributed in accordance with the Clery Act. This certification must also affirm that the institution understands its Clery Act obligations and that it has taken all necessary corrective actions to ensure that these violations do not recur.

As noted above, the exceptions identified in this finding constitute serious violations of the Clery Act that by their nature cannot be cured. OJC will be given an opportunity to publish and distribute an accurate and complete ASR and in so doing, finally begin to bring its overall campus security program into compliance with the Clery Act as required by its PPA. However, OJC is advised that these remedial measures cannot and do not diminish the seriousness of these violations nor do they eliminate the possibility that the Department will impose an adverse administrative action and/or require additional corrective measures.

Based on an evaluation of all available information including OJC's response, the Department will determine if additional actions will be required and will advise the institution accordingly in the FPRD.

OJC officials may wish to review the Department's "Handbook for Campus Safety and Security Reporting" (2011) during the preparation of its response. The handbook is

available online at: <http://www2.ed.gov/admins/lead/safety/handbook.pdf>. The regulations governing the Clery Act can be found at 34 C.F.R. §§ 668.14, 668.41, 668.46, and 668.49.

OJC's Response:

In its official response, OJC concurred with the content-based elements of the finding but asserted that it complied with the ASR distribution and notification requirements during the review period. College officials claimed that its campus safety policies and procedures were updated and were included in subsequent ASRs. Per the response, OJC represented that the ASR was and is distributed by October 1 of each year. In support of its claims, the College submitted copies of e-mail messages that were purportedly used to transmit the 2012 and 2013 ASRs.

In addition, OJC submitted a sample employment vacancy announcement that included a link to the ASR in an attempt to demonstrate that prospective employees are notified about the ASR. Per the response, this information was added to the vacancy announcement template in January 2009. Finally, the College stated that prospective students are advised to review the ASR on OJC's official website.

Final Determination:

Finding #2 of the program review report cited OJC for its failure to include all required policies and procedures in its 2011 ASR. Specifically, this report did not include required policy statements regarding the preparation of the annual disclosure of crime statistics, the issuance of timely warnings, and missing student notifications. In addition, OJC failed to develop and implement required programs and strategies to prevent sex offenses and disclose information about them in the 2011 ASR. Moreover, the annual report included no instructions on how to access state sex offender registry information and other disclosures required by 34 C.F.R. §668.46(b)(11), commonly referred to collectively as the "Campus Sexual Assault Victims' Bill of Rights." As a result of these violations, OJC was required to review and revise its internal policies and procedures related to *Clery Act* compliance and to develop and implement new policies and procedures as needed to ensure that the 2013 ASR and all future reports are accurate, complete, and are disseminated properly. In its response, OJC stated its concurrence with the content-based elements of the finding and challenged the distribution and notification components. The College also asserted that all necessary corrective action was taken to address the violations and submitted documents in support of its claims.

The Department carefully examined OJC's narrative response and supporting documentation. Based on that review and OJC's admission of noncompliance, the elements of the initial finding related to the omission of required policy, procedural, and programmatic disclosures in the 2011 ASR are sustained. Based on documentation

submitted as part of the response, the ASR distribution and notification elements of the finding are dropped; however, the College is advised to ensure that its ASRs and AFSRs are actively distributed to enrolled students and current employees and that all prospective students and employees are notified about these reports in an active and conspicuous manner.

OJC's response does not adequately clarify the extent to which the College complied or failed to comply with the *Clery Act*'s fire safety provisions in *34 C.F.R. §668.49*. Therefore, the College is required to submit additional documentation as set out below. Nevertheless, the review team's examination did indicate that the violations identified in the initial finding were, for the most part, satisfactorily addressed by the College's 2013 ASR and its new and revised internal policies and procedures. As such, the Department has determined that OJC's remedial action plan meets minimum requirements. For these reasons, the Department has accepted OJC's response and considers this finding to be closed for program review purposes.¹ Notwithstanding this action, the officials and directors of OJC are put on notice that the College must take any other action that may be necessary to address the deficiencies identified by the Department as well as any violations or weaknesses that were detected during the preparation of the College's response and/or as may otherwise be needed to ensure that these violations do not recur.

Furthermore, upon receipt of this FPRD, OJC must immediately conduct a full review of its 2014 ASR and AFSR and its data submissions to the CSSDACT and then address all statistical discrepancies and/or policy inaccuracies and/or omissions. If any revisions are required, the College must actively distribute the revised 2014 ASR and/or AFSR to all enrolled students and current employees. This distribution must be completed within 45 days of OJC's receipt of this FPRD. Within 50 days of receipt of this FPRD, OJC must submit copies of the following records to the Department: 1) the initial and revised 2013 and 2014 ASRs; 2) a statement of clarification regarding whether or not OJC maintains any on-campus student housing facilities and a list of all such facilities and the date that they were placed into service; and, 3) If OJC did in fact maintain any such student residential facilities, the College must submit copies of its 2011, 2012, 2013, and 2014 AFSRs (if any such reports were produced); and, 4) credible evidence showing that each of the ASRs and AFSRs were actively distributed to mandatory recipients. Suitable evidence of distribution may include a copy of an e-mail used to transmit the report or other similar documentation. These materials must be submitted via electronic mail to Mr. Jason Charlton at jason.charlton@ed.gov and to the Department's Clery Act Compliance Team at clery@ed.gov.

OJC's submission must reference the Program Review Control Number noted on the cover letter in the subject line of its e-mail submission. If any of the requested records were not produced, do not exist or are otherwise unavailable, OJC officials must clearly communicate that fact and the reasons for it to the Department in writing via electronic

¹ Subject to OJC's satisfactory and timely production of the records requested by the Department.

mail. In this context, OJC officials are advised that no new documents are to be created at this time for the purpose of demonstrating compliance with any *Clery Act* requirement for past periods (except for required revisions to the 2014 ASR and/or AFSR). The College is also advised that a failure to respond to this request for document production will result in a referral for the imposition of administrative actions in addition to any referrals that may be advanced to address the original violations identified in Finding #2 of the program review report.

Although the finding is now closed, OJC is reminded that the exceptions identified above constitute serious violations of the *Clery Act* that by their nature cannot be cured. There is no way to truly "correct" violations of this type once they occur. OJC asserted that it has taken adequate remedial actions and that by doing so, that it is now in compliance with the *Clery Act* as required by its Program Participation Agreement (PPA). Nevertheless, OJC officials must understand that the production and distribution of accurate and complete ASRs and AFSRs are among the most basic requirements of the *Clery Act* and are fundamental to its campus safety goals and that any failure to comply deprives students and employees of important campus crime and fire safety information to which they are entitled. For these reasons, the College is advised that its remedial actions cannot and do not diminish the seriousness of these violations nor do they eliminate the possibility that the Department will impose an adverse administrative action and/or require additional corrective actions as a result.

Because of the serious consequences of such violations, the Department strongly recommends that OJC re-examine its campus safety and general Title IV policies and procedures on an annual basis to ensure that they continue to reflect current institutional practices and are compliant with Federal requirements. To that end, OJC officials are encouraged to consult the Department's "Handbook for Campus Safety and Security Reporting" (2011) as a reference guide on *Clery Act* compliance. The Handbook is online at: www2.ed.gov/admins/lead/safety/handbook.pdf. The Department also provides a number of other *Clery Act* training resources. College officials can access these materials at: www2.ed.gov/admins/lead/safety/campus.html. The regulations governing the *Clery Act* can be found at 34 C.F.R. §§668.14, 668.41, 668.46, and 668.49. OJC management is also reminded that Section 304 of the Violence Against Women Reauthorization Act of 2013 (VAWA) amended the *Clery Act* to require institutions to compile and disclose statistics for incidents of sexual assault, dating violence, domestic violence, and stalking. VAWA also requires institutions to include new policy, procedural, and programmatic disclosures regarding sexual assault prevention and response in their ASRs. All institutions are currently obligated to make a documented good-faith effort to comply with the statutory requirements of VAWA and were required to include all new required content in the 2014 ASR. The Department issued Final Rules on the VAWA amendments on October 20, 2014 and therefore, these regulations will go into effect on July 1, 2015, per the Department's Master Calendar. OJC officials may access the text of the Final Rule at:

<http://map.ed.gov/registers/attachments/FR102014FinalRuleViolenceAgainstWomenAct.pdf>.

Finding # 3: Drug and Alcohol Abuse Prevention Program Requirements Not Met

Citation:

The Drug-Free Schools and Communities Act (DFSCA) and Part 86 of the Department's General Administrative Regulations requires each participating institutions of higher education (IHE) to certify that it has developed and implemented a drug and alcohol abuse education and prevention program. The program must be designed to prevent the unlawful possession, use, and distribution of drugs and alcohol on campus and at recognized events and activities.

On an annual basis, the IHE must distribute written information about its drug and alcohol abuse prevention program (DAAPP) to all students, faculty, and staff. The distribution plan must make provisions for providing the material to students who enroll at a date after the initial distribution, and for employees who are hired at different times throughout the year. The information must include:

- *A written statement about its standards of conduct that prohibits the unlawful possession, use or distribution of illicit drugs and alcohol by students and employees;*
- *A written description of legal sanctions imposed under Federal, state and local laws for unlawful possession or distribution of illicit drugs and alcohol;*
- *A description of the health risks associated with the use of illicit drugs and the abuse of alcohol;*
- *A description of any drug or alcohol counseling, treatment, or rehabilitation or re-entry programs that are available to students and employees; and*
- *A statement that the IHE will impose disciplinary sanctions on students and employees for violations of the institution's codes of conduct and a description of such sanctions.*

In addition, each IHE must conduct a biennial review in order to measure the effectiveness of its drug prevention program, and to ensure consistent treatment in its enforcement of its disciplinary sanctions. The IHE must prepare a report of findings and maintain its biennial review report and supporting materials and make them available to the Department and interested parties upon request. 34 C.F.R. §§86.3 and 86.100.

Noncompliance:

OJC failed to include all required information in its annual DAAPP disclosure. Specifically, OJC's DAAPP did not include adequate information regarding the health risks associated with illicit drug use and alcohol abuse as required.

Failure to comply with the DAAPP requirements deprives students and employees of important information regarding the educational, health, legal, and other consequences of drug and alcohol use and abuse. Such a failure may contribute to increased drug and alcohol abuse on-campus as well as an increase in drug and alcohol-related violent crime.

Required Action:

OJC is required to take all necessary corrective actions to resolve the violation identified above. At a minimum, the College must perform the following:

- 1. Develop and implement a comprehensive DAAPP that includes all of the required elements found in the DFSCA and the Department's Part 86 regulations; and,*
- 2. Develop procedures for ensuring that the DAAPP program materials are distributed to every student who is currently enrolled for academic credit (excluding continuing education credits) and all employees.*

When the new program materials are complete, OJC must provide a draft copy of its DAAPP and its new and revised policies and procedures with its response to this program review report. Once the new DAAPP disclosure is approved by the Department, OJC will be required to distribute it in accordance with the Part 86 regulations and provide documentation evidencing the distribution as well as a certification statement attesting to the fact that the materials were distributed in accordance with the DFSCA.

In addition, the OJC must submit copies of its DAAPP disclosures and records showing that the DAAPP disclosure was actively distributed to all employees and students enrolled for credit during the 2011-2012 and 2012-2013 academic years (including students enrolled during summer terms and/or through non-traditional enrollment options such as evenings; weekends; accelerated; online; etc.). Finally, the College must submit copies of its two most-recent biennial review reports.

As noted above, violations of the DFSCA are serious and by their nature, cannot be cured. OJC will be given an opportunity to develop and distribute an accurate and

complete DAAPP disclosure and conduct a biennial review of its new program, and in so doing, begin to bring its drug and alcohol programs into compliance with the DFSCA as required by its PPA. However, the College is advised that these remedial measures cannot and do not diminish the seriousness of these violations, nor do they eliminate the possibility that the Department will impose additional corrective or administrative actions.

Based on an evaluation of all available information including OJC's response, the Department will determine if additional actions will be required and will advise the institution accordingly in its Final Program Review Determination letter.

OJC's Response:

In its official response, OJC stated that it did not agree with the finding. College officials claimed that adequate DAAPP information is distributed with the annual disclosure of campus crime statistics to students and employees. OJC also noted that DAAPP information is available in various places on the College's website.

Per the response, OJC management also asserted that while required information about the health risks associated with drugs and alcohol was not included in the actual DAAPP, it was included in the Academic Catalog, a copy of which was included as part of the response. The College also noted that the administration enhanced its DAAPP and will publish a materially-complete disclosure document to be distributed in the 2014-2015 academic year.

Finally, OJC officials conceded that no biennial review was conducted during the two years prior to the Department's site visit. To address this additional violation, the College claimed that a review was conducted and created a template that will inform future reviews.

Final Determination:

Finding #3 of the program review report cited OJC for not including required information about the health risks associated with illicit drug use and alcohol abuse in its DAAPP. As a result of this violation, OJC was required to review and enhance its DAAPP and ensure that all required information is included in its annual disclosure. In its response, OJC challenged the finding by claiming that the information in question was included in certain of its publications and on its website. The College also conceded that it failed to conduct a biennial review to assess the effectiveness of its DAAPP and as a result, was unable to produce the required report of findings.

The Department carefully examined OJC's narrative response and supporting documentation. The Department took note of the College's challenge; however, based on a full review of available information, the violation identified in the initial finding is

sustained. As noted above, OJC also conceded that it failed to conduct a biennial review on the required schedule. Therefore, that finding of violation is sustained as well. The review team's examination also indicated that the identified violations were, for the most part, satisfactorily addressed by the College's enhanced DAAPP program materials, its biennial review report, and its new and revised internal policies and procedures. As such, the Department determined that OJC's remedial action plan meets minimum requirements. For these reasons, the Department has accepted the response and considers this finding to be closed for purposes of this program review. Nevertheless, the officials and directors of OJC are put on notice that they must take all other action that may be necessary to address the deficiencies identified by the Department as well as any additional violations and weaknesses that were detected during the preparation of its program review response and/or as may otherwise be needed to ensure that these violations do not recur.

Although this finding is now closed, OJC is reminded that the exceptions identified above constitute a serious violation of the *DFSCA* that by its nature cannot be cured. There is no way to truly "correct" violations of this type once they occur. OJC asserted that it has taken adequate remedial actions and by doing so, has taken steps to comply with the *DFSCA* as required by its PPA. Notwithstanding these actions, OJC officials must understand that compliance with the *DFSCA* is essential to maintaining a safe and healthy learning environment. *DFSCA* violations deprive students and employees of important information regarding the educational, financial, health, and legal consequences of alcohol abuse and illicit drug use and deprive institutions of important information about the effectiveness of any drug and alcohol programs that may have been in place during the review period. For these reasons, OJC is advised that its remedial measures cannot and do not diminish the seriousness of these violations nor do they eliminate the possibility that the Department will impose an adverse administrative action and/or additional remedial measures as a result.

In light of the serious consequences associated with compliance failures of this type, the Department strongly recommends that OJC re-examine its drug and alcohol policies, procedures, and programs on at least an annual basis and revise them as needed to ensure that they continue to reflect current institutional policy and are in full compliance with the *DFSCA*. Please be advised that the Department may request information on a periodic basis to test the effectiveness of the College's new policies and procedures.

D. Appendices



December 5, 2013

Jim Rizzuto, President
Otero Junior College
1802 Colorado Avenue
La Junta, CO 81050-3346

Certified Mail
Return Receipt Requested
7012 1640 0000 0216 0095

RE: **Program Review Report**
OPE ID: 00136200
PRCN: 201220527982

Dear President Rizzuto:

From March 26, 2012 through March 30, 2012, Briget Jans and Michael Powers conducted a review of Otero Junior College's (OJC) administration of the programs authorized pursuant to Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. §§ 1070 et seq. (Title IV, HEA programs). The findings of that review are presented in the enclosed report.

Findings of noncompliance are referenced to the applicable statutes and regulations and specify the action required to comply with the statute and regulations. Please review the report and respond to each finding, indicating the corrective actions taken by OJC. The response should include a brief, written narrative for each finding that clearly states OJC's position regarding the finding and the corrective action taken to resolve the finding. Separate from the written narrative, OJC must provide supporting documentation as required in each finding.

Please note that pursuant to HEA section 498A(b), the Department is required to:

- (1) provide to the institution an adequate opportunity to review and respond to any preliminary program review report¹ and relevant materials related to the report before any final program review report is issued;
- (2) review and take into consideration an institution's response in any final program review report or audit determination, and include in the report or determination –
 - a. A written statement addressing the institution's response;
 - b. A written statement of the basis for such report or determination; and
 - c. A copy of the institution's response.

¹ A "preliminary" program review report is the program review report. The Department's final program review report is the Final Program Review Determination (FPRD).

Chicago/Denver School Participation Division
500 West Madison, Suite 1576
Chicago, Illinois 60661

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The Department considers the institution's response to be the written narrative (to include e-mail communication). Any supporting documentation submitted with the institution's written response will not be attached to the FPRD. However, it will be retained and available for inspection by OJC upon request. Copies of the program review report, the institution's response, and any supporting documentation may be subject to release under the Freedom of Information Act (FOIA) and can be provided to other oversight entities after the FPRD is issued.

The institution's response should be sent directly to Jason Charlton of this office within 60 calendar days of receipt of this letter.

Protection of Personally Identifiable Information (PII):

PII is any information about an individual which can be used to distinguish or trace an individual's identity (some examples are name, social security number, date and place of birth). The loss of PII can result in substantial harm, embarrassment, and inconvenience to individuals and may lead to identity theft or other fraudulent use of the information. To protect PII, the findings in the attached report **do** not contain any student PII. Instead, **each** finding references students only by a student number created by Federal Student Aid. The student numbers were assigned in Appendix A, Student Sample. Please see the enclosure Protection of Personally Identifiable Information for instructions regarding submission to the Department of required data / documents containing PII.

Record Retention:

Program records relating to the period covered by the program review must be retained until the later of: resolution of the loans, claims or expenditures questioned in the program review; or the end of the retention period otherwise applicable to the record under 34 C.F.R. § 668.24(e).

We would like to express our appreciation for the courtesy and cooperation extended during the review. Please refer to the above Program Review Control Number (PRCN) in all correspondence relating to this report. If you have any questions concerning this report, please contact Jason Charlton at (312) 730-1695 or jason.charlton@ed.gov.

Sincerely,

Dr. Brenda Yette
Compliance Manager

cc: Angela Benfatti, Financial Aid Administrator

Enclosure:
Protection of Personally Identifiable Information

Prepared for
Otero Junior College

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OPE ID 00136200
PRCN 201220527982

Prepared by
U.S. Department of Education
Federal Student Aid
Chicago/Denver School Participation Division

Program Review Report

December 5, 2013

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Otero Junior College
OPE ID 00136200
PRCN 201220527982

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A. Institutional Information

Otero Junior College
1802 Colorado Avenue
La Junta, CO 81050-3346

Type: Public

Highest Level of Offering: Associate's Degree

Accrediting Agency: North Central Association of Colleges and Schools

Current Student Enrollment: 1,546 (2011)

% of Students Receiving Title IV: 91% (2010-2011)

Title IV Participation, Postsecondary Education Participants System (PEPS):

	2010-2011
Federal Pell Grant (Pell)	\$3,644,151.00
William D. Ford Federal Direct Loan Program (Direct Loan)	\$3,728,187.00
Federal Supplemental Education Opportunity Grant (FSEOG)	\$45,248.00
Federal Work Study (FWS)	\$51,869.00

Default Rate Direct Loan:	2010	26.6%
	2009	29.6%
	2008	21.0%

B. Scope of Review

The U.S. Department of Education (the Department) conducted a program review Otero Junior College (OJC) from March 26, 2012 to March 30, 2012. The review was conducted by Briget Jans and Michael Powers.

The focus of the review was to determine OJC's compliance with the statutes and federal regulations as they pertain to the institution's administration of Title IV programs. The review consisted of, but was not limited to, an examination of OJC's policies and procedures regarding institutional and student eligibility, individual student financial aid and academic files, attendance records, student account ledgers, and fiscal records.

A sample of 15 files was identified for review from the 2010-2011 and 2011-2012 (year to date) award years. The files were selected randomly from a statistical sample of the total population receiving Title IV, HEA program funds for each award year. Appendix A lists the names and partial social security numbers of the students whose files were examined during the program review.

Disclaimer:

Although the review was thorough, it cannot be assumed to be all-inclusive. The absence of statements in the report concerning OJC's specific practices and procedures must not be construed as acceptance, approval, or endorsement of those specific practices and procedures. Furthermore, it does not relieve OJC of its obligation to comply with all of the statutory or regulatory provisions governing the Title IV, HEA programs.

This report reflects initial findings. These findings are not final. The Department will issue its final findings in a subsequent Final Program Review Determination letter.

C. Findings

During the review, several areas of noncompliance were noted. Findings of noncompliance are referenced to the applicable statutes and regulations and specify the actions to be taken by OJC to bring operations of the financial aid programs into compliance with the statutes and regulations.

Finding 1. Incorrect Return of Title IV Funds

Citation:

When a recipient of Title IV grant or loan assistance withdraws from an institution during a payment period or period of enrollment in which the recipient began attendance, the institution

must determine the amount of Title IV grant or loan assistance that the student earned as of the student's withdrawal date. *34 C.F.R. § 668.22(a)(1)*. The amount of Title IV grant or loan assistance that is earned by the student is calculated by determining the percentage of Title IV grant or loan assistance that has been earned by the student and applying this percentage to the total amount of Title IV grant or loan assistance that was disbursed (and that could have been disbursed) to the student, or on the student's behalf, for the payment period or period of enrollment as of the student's withdrawal date. *34 C.F.R. § 668.22(e)(1)(i) & (ii)*. The percentage of Title IV grant or loan assistance that has been earned by the student is equal to the percentage of the payment period or period of enrollment that the student completed as of the student's withdrawal date. *34 C.F.R. § 668.22(e)(2)(i)*. The total number of calendar days in a payment period or period of enrollment includes all days within the period, except that scheduled breaks of at least 5 consecutive days are excluded from the total number of calendar days in a payment period or period of enrollment and the number of calendar days completed in that period. *34 C.F.R. § 668.22(f)(2)(i)*.

A correctly calculated return of Title IV FSA funds must be paid no later than forty-five days after a participating institution has determined or should have determined that the student has withdrawn, been expelled or otherwise terminated his or her enrollment.

Noncompliance:

During the period under review, OJC regularly failed to count the number of days in the term correctly. OJC did not exclude the days when the institution was on break for five or more consecutive days. Because of this systemic issue, OJC incorrectly calculated the amount of Title IV funds to be returned.

Student #6 withdrew on March 17, 2011 during the spring 2011 semester. The scheduled start date was January 10, 2011 and ended on April 29, 2011. After excluding the period March 21 through March 25, 2011, a period of 5 days indicated as "Spring Break" on the institution's academic calendar, the actual days in the spring 2011 term is 105. In the R2T4 calculation the total days in the term is 110. This seems to be because OJC failed to exclude the 5 day break. Therefore, OJC incorrectly calculated the amount of Title IV funds to be returned on behalf of the student. Although the completion percentage is incorrect due to the wrong number of days, the student still earned all of the aid they received; the percentage of the payment period went from 60.9% to 63.8% and therefore no liability is associated with this student.

Student #18 withdrew on November 7, 2011 during the fall 2011 semester. The scheduled start date was August 22, 2011 and ended on December 9, 2011. After excluding the period November 23 through November 27, 2011, a period of 5 days indicated as "Thanksgiving Vacation" on the institution's academic calendar, the actual days in the fall 2011 term is 105. In the R2T4 calculation the total days in the term is 110. This seems to be because OJC failed to exclude the 5 day break. Therefore, OJC incorrectly calculated the amount of the Title IV funds to be returned on behalf of the student. Although the completion percentage is incorrect due to the wrong number of days, the student still earned all of the aid they received; the percentage of

the payment period went from 70.9% to 74.3% and therefore no liability is associated with this student.

Student #31 withdrew on November 9, 2011 during the fall 2011 semester. The scheduled start date was August 22, 2011 and ended on December 9, 2011. As stated previously, the actual total days in the fall 2011 term is 105. In the R2T4 calculation the total days in the term is 110. This seems to be because OJC failed to exclude the 5 day break. Therefore, OJC incorrectly calculated the amount of the Title IV funds to be returned on behalf of the student. Although the completion percentage is incorrect due to the wrong number of days, the student still earned all of the aid they received; the percentage of the payment period went from 72.7% to 76.2% and therefore no liability is associated with this student for this term. However, the student also withdrew the following term, on January 11, 2012. The scheduled start date was January 9, 2012 and ended on April 27, 2012. The actual total days in the spring 2012 term is 105 after excluding the period March 21 through March 24, 2010, a period of 5 days indicated as "Spring Break" on the institution's academic calendar. In the R2T4 calculation the total days in the term is 101. OJC incorrectly calculated the amount of Title IV funds earned by the student. For the spring 2012 term, the percentage earned by the student was calculated at 3.0%, when it should have been 2.9% and the student received \$1.39 more than he should have in a post-withdrawal disbursement.

During the review, the reviewers also discovered that a student attending OJC may take courses provided through Colorado Community College Online entirely or in combination with on-campus courses. While OJC is a part of the Colorado Community College system, the online courses did not share the same term periods as OJC's on-campus courses did. The online courses began a week after and ended two days after the on-campus courses for the fall term. For the spring term the on-campus courses began 14 days prior to and ended nine days before the online courses. Moreover, some of the online courses covered a shorter period of time within the term. With students being able to enroll in both online and on-campus courses simultaneously, OJC was not properly defining its academic year or academic term.

Although no instances of noncompliance affecting Title IV recipients were found by the reviewers, OJC's lack of procedures correctly defining terms and modules, and for clearly establishing a means of monitoring changes of enrollment status impacting R2T4 calculations, is of concern.

Required Action:

OJC must immediately establish and implement written procedures to ensure all funds are calculated accurately and within the timeframes established by federal regulations. A copy of those policies and procedures must be submitted in response to this report.

Due to the fact that several errors were identified in the statistical sampling and a seemingly systemic errors for identifying the number of days in a term and properly defining the institution's academic year, OJC must perform a file review of all students who withdrew or

otherwise terminated attendance during the 2010-2011 and 2011-2012 award years. The information should be provided in an Excel spreadsheet, paper and electronic formats with the following data:

- 1) Student name
- 2) Social security number
- 3) Term begin and end date of the term that student withdrew
- 4) Registration indicating what classes were on-line (if any) and what classes were on-campus (if any) for the term the student withdrew
- 5) Withdrawal date
- 6) Date the institution determined the student withdrew
- 7) Amount of Title IV FSA funds disbursed or that could have been disbursed, by each program (Pell, Subsidized loan, Unsubsidized loan, etc.) and date of each disbursement
- 8) Amount of required returns of Title IV FSA
- 9) Amount and date of returns already paid to the Department by each program
- 10) Difference between amount owed to the Department and amount already returned to the Department by each program

A copy of this report must be submitted in electronic format (Excel spreadsheets) with supporting documentation including but not limited to official withdrawal forms, R2T4

Finding # 2: Crime Awareness Requirements Not Met - Required Policy Statements Inadequate/Omitted from Annual Security Report (ASR) and Failure to Distribute the ASR as a Comprehensive Document

Citation:

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (*Clery Act*) and the Department's regulations require that all institutions that receive Title IV, HEA funds must, by October 1 of each year, publish and distribute to its current students and employees through appropriate publications and mailing, a comprehensive Annual Security Report that contains, at a minimum, all of the statistical and policy elements enumerated in 34 C.F.R. § 668.46(b).

The ASR must be prepared and actively distributed as a single document. Acceptable means of distribution include U.S. Mail, campus mail, hand delivery, or by posting the ASR on the institution's website. If an institution chooses to distribute its report by posting to an internet or intranet site, the institution must, by October 1 of each year, distribute a notice to all students and employees that includes a statement of the report's availability and a link to its exact electronic address, a description of its contents, as well as an advisement that a paper copy will be provided upon request. 34 C.F.R. § 668.41(e)(1). These regulations also require institutions to provide a notice containing this information to all prospective students and employees. This notice must

also inform interested parties about how to obtain a paper copy of the ASR. *34 C.F.R. § 668.41(e)(4)*.

An institution's ASR must include statistics for incidents of crimes reported during the three most recent calendar years. The covered categories include criminal homicide (murder and non-negligent manslaughter), forcible and non-forcible sex offenses, robbery, aggravated assault, burglary, motor vehicle theft, and arson. Statistics for certain hate crimes as well as arrest and disciplinary referral statistics for violations of certain laws pertaining to illegal drugs, illegal usage of controlled substances, liquor, and weapons also must be disclosed in the ASR. These crime statistics must be published for the following geographical categories: 1) on campus; 2) on-campus student residential facilities (as a subset of category # 1); 3) certain non-campus buildings and property; and, 4) certain adjacent and accessible public property. *34 C.F.R. § 668.46(c)(1)*.

In addition, the ASR must include several policy statements. These disclosures are intended to inform the campus community about the institution's security policies, procedures, and the availability of programs and resources as well as channels for victims of crime to seek recourse. In general, these policies include topics such as the law enforcement authority and practices of campus police and security forces, incident reporting procedures for students and employees, and policies that govern the preparation of the report itself. Institutions are also required to disclose alcohol and drug policies and educational programs. Policies pertaining to sexual assault education, prevention, and adjudication must also be disclosed. Institutions also must provide detailed policies of the issuance of timely warnings and emergency notifications as well as its emergency response and evacuation procedures. All required information referenced in *34 C.F.R. § 668.46(b)* must be published in the ASR. With the exception of certain drug and alcohol program information, cross referencing to other publications is not sufficient to meet the publication and distribution requirements of the Act. *34 C.F.R. § 668.46(b)*.

Finally, each institution must also submit its crime statistics for inclusion in the Department's "Campus Safety and Security Data Analysis Cutting Tool." *34 C.F.R. § 668.41(e)(5)*.

Noncompliance:

OJC violated multiple provisions of the *Clery Act*. Specifically, the College failed to publish an accurate and complete 2011 ASR and to distribute it to current students and employees in the required manner. The Department's analysis indicates omitted and/or inadequate disclosures in the following areas:

- A statement of policy regarding the issuance of timely warnings to the campus community regarding the occurrence of Clery-reportable crimes that pose a serious and ongoing threat;
- A statement of policy regarding the College's policies and procedures governing the publication of the annual disclosure of crime statistics;

- A statement of policy regarding the institution's campus safety programs designed to prevent sex offenses. The statement must include a description of the institution's educational programs designed to promote awareness of rape, acquaintance rape, and other forcible and non-forcible sex offenses. It must also include the procedures that a victim/survivor should adhere to when a sex crime does occur and address the following topics:
 - who should be contacted;
 - to whom the alleged offense should be reported;
 - the student's option to notify appropriate law enforcement authorities;
 - a statement that institutional personnel, if requested, will assist the student in notifying these authorities;
 - the importance of evidence preservation for the purposes of proving the commission of a crime;
 - existing on and off-campus counseling, mental health, or other student services that are available for victims of sex offenses;
 - notification that the institution will change a victim's academic and or living situation after an alleged sex offense, if an accommodation is reasonably available;
 - procedures for campus disciplinary action in cases of an alleged sex offense including a clear statement that the accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding; and,
 - a statement that both the accuser and the accused must be informed of the outcome of such a proceeding and an explanation of the sanctions that may be imposed following a finding of responsibility by a campus judicial body regarding rape, acquaintance rape, or other forcible or non-forcible sex offense case.
- A statement advising the campus community where state law enforcement agency information concerning registered sex offenders may be obtained; and
- A statement of policy regarding the institution's missing student notification procedures that will apply in any case where a student who resides in on-campus student housing facility is determined to have been missing for 24 hours.

Although OJC's ASR does state that all alleged on-campus sexual assaults will be referred to local authorities, the Department notes that the College's policies regarding campus sexual assaults did not include certain disclosures that are required by *34 C.F.R. § 668.46(b)(11)*, sometimes referred to as the "Campus Sexual Assault Victims' Bill of Rights."

The extent of the omissions noted above indicate a general failure on the part of the institution to publish an accurate and complete ASR and to otherwise comply with the requirements of the *Clery Act*. For these reasons, the Department also finds that OJC's 2011 ASR was so lacking in required content that it substantially failed to distribute a comprehensive 2011 ASR in

accordance with Federal regulations. Furthermore, OJC also failed to notify prospective students and employees about the availability of the 2011 ASR in the required manner. The distribution and notification exceptions constitute separate violations of the *Clery Act*.

Failure to publish an accurate and complete ASR, containing all required policy, procedural and statistical information and to actively distribute the report as a comprehensive document to all current students and employees in accordance with Federal regulations deprives the campus community of important security information that can empower its members to make informed decisions and play an active role in their own safety and security.

Required Action:

As a result of this violation, OJC must review and revise its existing internal policies and procedures that govern the preparation, publication, and distribution of the ASR and develop and implement any new policies and procedures as needed to ensure that all campus security operations at OJC will be carried out in accordance with the *Clery Act* going forward. The new procedures also must specifically articulate how prospective students and employees will be notified of the ASR's availability.

Using its new and revised policies as a guide, OJC must prepare and publish an accurate and complete ASR that includes all of the statistical disclosures and policy, procedure and programmatic information required by *34 C.F.R. § 668.46(b)*. A copy of the institution's new and revised policies and procedures and its draft ASR must accompany OJC's response to this program review report. Once the new ASR is evaluated by the review team for accuracy and completeness, OJC will be required to actively distribute it to all current students and employees by October 1, 2013. Furthermore, the College must submit its 2010-2012 Annual Fire Safety Reports with its official response. If OJC did not publish and/or distribute any of these reports, the College must clearly state those facts. Please be advised that OJC must not produce any new documents for any past periods for the purpose of complying with this demand for document production. The College also must submit its draft 2013 AFSR along with its response for the Department's review

Finally, OJC will be required to provide documentation to the Department evidencing the distribution as well as a certification statement attesting to the fact that the materials were distributed in accordance with the *Clery Act*. This certification must also affirm that the institution understands its *Clery Act* obligations and that it has taken all necessary corrective actions to ensure that these violations do not recur.

As noted above, the exceptions identified in this finding constitute serious violations of the *Clery Act* that by their nature cannot be cured. OJC will be given an opportunity to publish and distribute an accurate and complete ASR and in so doing, finally begin to bring its overall campus security program into compliance with the *Clery Act* as required by its PPA. However, OJC is advised that these remedial measures cannot and do not diminish the seriousness of these

violations nor do they eliminate the possibility that the Department will impose an adverse administrative action and/or require additional corrective measures.

Based on an evaluation of all available information including OJC's response, the Department will determine if additional actions will be required and will advise the institution accordingly in the FPRD.

OJC officials may wish to review the Department's "Handbook for Campus Safety and Security Reporting" (2011) during the preparation of its response. The handbook is available online at: <http://www2.ed.gov/admins/lead/safety/handbook.pdf>. The regulations governing the *Clery Act* can be found at 34 C.F.R. §§ 668.14, 668.41, 668.46, and 668.49.

Finding # 3: Drug and Alcohol Abuse Prevention Program Requirements Not Met

Citation:

The Drug-Free Schools and Communities Act (*DFSCA*) and Part 86 of the Department's General Administrative Regulations requires each participating institutions of higher education (IHE) to certify that it has developed and implemented a drug and alcohol abuse education and prevention program. The program must be designed to prevent the unlawful possession, use, and distribution of drugs and alcohol on campus and at recognized events and activities.

On an annual basis, the IHE must distribute written information about its drug and alcohol abuse prevention program (DAAPP) to all students, faculty, and staff. The distribution plan must make provisions for providing the material to students who enroll at a date after the initial distribution, and for employees who are hired at different times throughout the year. The information must include:

- A written statement about its standards of conduct that prohibits the unlawful possession, use or distribution of illicit drugs and alcohol by students and employees;
- A written description of legal sanctions imposed under Federal, state and local laws for unlawful possession or distribution of illicit drugs and alcohol;
- A description of the health risks associated with the use of illicit drugs and the abuse of alcohol;
- A description of any drug or alcohol counseling, treatment, or rehabilitation or re-entry programs that are available to students and employees; and
- A statement that the IHE will impose disciplinary sanctions on students and employees for violations of the institution's codes of conduct and a description of such sanctions.

In addition, each IHE must conduct a biennial review in order to measure the effectiveness of its drug prevention program, and to ensure consistent treatment in its enforcement of its disciplinary sanctions. The IHE must prepare a report of findings and maintain its biennial review report and supporting materials and make them available to the Department and interested parties upon request. *34 C.F.R. §§ 86.3 and 86.100.*

Non-compliance:

OJC failed to include all required information in its annual DAAPP disclosure. Specifically, OJC's DAAPP did not include adequate information regarding the health risks associated with illicit drug use and alcohol abuse as required.

Failure to comply with the DAAPP requirements deprives students and employees of important information regarding the educational, health, legal, and other consequences of drug and alcohol use and abuse. Such a failure may contribute to increased drug and alcohol abuse on-campus as well as an increase in drug and alcohol-related violent crime.

Required Action:

OJC is required to take all necessary corrective actions to resolve the violation identified above. At a minimum, the College must perform the following:

1. Develop and implement a comprehensive DAAPP that includes all of the required elements found in the *DFSCA* and the Department's Part 86 regulations; and,
2. Develop procedures for ensuring that the DAAPP program materials are distributed to every student who is currently enrolled for academic credit (excluding continuing education credits) and all employees.

When the new program materials are complete, OJC must provide a draft copy of its DAAPP and its new and revised policies and procedures with its response to this program review report. Once the new DAAPP disclosure is approved by the Department, OJC will be required to distribute it in accordance with the Part 86 regulations and provide documentation evidencing the distribution as well as a certification statement attesting to the fact that the materials were distributed in accordance with the *DFSCA*.

In addition, the OJC must submit copies of its DAAPP disclosures and records showing that the DAAPP disclosure was actively distributed to all employees and students enrolled for credit during the 2011-2012 and 2012-2013 academic years (including students enrolled during summer terms and/or through non-traditional enrollment options such as evenings; weekends; accelerated; online; etc.). Finally, the College must submit copies of its two most-recent biennial review reports.

As noted above, violations of the *DFSCA* are serious and by their nature, cannot be cured. OJC will be given an opportunity to develop and distribute an accurate and complete DAAPP

disclosure and conduct a biennial review of its new program, and in so doing, begin to bring its drug and alcohol programs into compliance with the *DFSCA* as required by its PPA. However, the College is advised that these remedial measures cannot and do not diminish the seriousness of these violations, nor do they eliminate the possibility that the Department will impose additional corrective or administrative actions.

Based on an evaluation of all available information including OJC's response, the Department will determine if additional actions will be required and will advise the institution accordingly in its Final Program Review Determination letter.

Finding 4. Separation of Duties

Citation:

To begin and to continue to participate in any Title IV, HEA program, an institution shall demonstrate to the Secretary that the institution is capable of adequately administering that program. The Secretary considers an institution to have that administrative capability if the institution;

1. Administers Title IV, HEA programs with adequate checks and balances in its system of internal controls; and
2. Divides the functions of authorizing payments and disbursing or delivering funds so that no office has responsibility for both functions with respect to any particular student aided under the programs. For example, the functions of authorization payments and disbursing or delivering funds must be divided so that for any particular student aided under those programs, the two functions are carried out by at least two organizationally independent individuals who are not members of the same family, or who do not together exercise substantial control over the institution.

34 C.F.R. § 668.16(c)

Noncompliance:

The review disclosed that The Financial Aid Office was both authorizing and disbursing the Title IV, HEA funds to students.

Required Action:

OJC must establish and implement procedures to ensure that its internal mechanisms separate the awarding and disbursing of Title IV, HEA funds. A copy of these procedures must be submitted in response to this report.

Finding 5. Consumer Information Requirements Not Met

Citation:

An educational institution that receives federal funding is required to hold an educational program about the United States Constitution on September 17 of each year, commemorating the September 17, 1787 signing of the Constitution. When September 17 falls on a Saturday, Sunday, or holiday, Constitution Day shall be held during the preceding or following week.

Section 111 of Division J of Pub. L. 108-447, the "Consolidated Appropriations Act, 2005," Dec. 8, 2004; 118 Stat. 2809, 3344-45 (Section 111)

Additionally, an institution shall describe the rights and responsibilities of students receiving financial assistance and, specifically, assistance under the Title IV, HEA programs. This description must include specific information regarding:

1. Criteria for continued student eligibility under each program;
2. (i) Standards which the student must maintain in order to be considered to be making satisfactory progress in his or her course of study for the purpose of receiving financial assistance; and
(ii) Criteria by which the student who has failed to maintain satisfactory progress may re-establish his or her eligibility for financial assistance. *34 C.F.R. § 668.42(c)*.

A student is eligible to receive Title IV, HEA program assistance if the student maintains satisfactory progress in his or her course of study according to the institution's published standards of satisfactory progress. *34 C.F.R. § 668.32(f)*

An institution is required to establish, publish and apply reasonable standards for measuring whether an otherwise eligible student is maintaining satisfactory progress in his or her educational program. The Secretary considers an institution's standards to be reasonable if the standards--

1. Are the same as or stricter than the institution's standards for a student enrolled in the same educational program who is not receiving assistance under a Title IV, HEA program;
2. Provide for consistent application of standards to all students within categories of students, e.g., full-time, part-time, undergraduate, and graduate students, and educational programs established by the institution;\
3. Provide that a student's academic progress is evaluated:
 - a. At the end of each payment period if the educational program is either one academic year in length or shorter than an academic year; or

- b. For all other educational programs, at the end of each payment period or at least annually to correspond with the end of a payment period;
4. Specify the grade point average (GPA) that a student must achieve at each evaluation, or if a GPA is not an appropriate qualitative measure, a comparable assessment measured against a norm. If a student is enrolled in an educational program of more than two academic years, the policy specifies that at the end of the second academic year, the student must have a GPA of at least a "C" or its equivalent, or have academic standing consistent with the institution's requirements for graduation;
5. Specify:
 - a. The past at which a student must progress through his or her educational program to ensure that the student will complete the program within the maximum timeframe. The timeframe must be:
 - i. For an undergraduate program, be no longer than 150 percent of the published length of the educational program measured in academic years, terms, credit hours attempted, clock hours, completed, etc. as appropriate;
 - ii. For a graduate program, a period defined by the institution that is based on the length of the educational program;
 - b. An institution calculates the past at which the student progressing by dividing the cumulative number of hours the student has successfully completed by the cumulative number of hours the student has attempted. In making this calculation, the institution is not required to included remedial courses;
6. Describe how a student's GPA and pace of completion are affected by course incompletes, withdrawals, or repetitions, or transfers of credit from other institutions. Credit hours from another institution that are accepted toward the student's educational program must count as both attempted and completed hours;
7. At the time of each evaluation, a student who has not achieved the required GPA, or who is not successfully completing his or her educational program at the required past, is no longer eligible to receive Title IV, HEA assistance
8. If the institution places students on financial aid warning, or on financial aid probation, the policy describes:

- a. A student on financial aid warning may continue to receive assistance for one payment period. Financial aid warning status may be assigned without an appeal or other action by the student; and
 - b. A student on financial aid probation may receive assistance for one payment period. While a student is on financial aid probation, the institution may require the student to fulfill specific terms and conditions. At the end of one payment period on financial aid probation, the student must meet the institution's satisfactory academic progress standards or meet the requirements of the academic plan developed by the institution and the student to qualify for further assistance
9. If the institution permits a student to appeal a determination by the institution that he or she is not making satisfactory academic progress, the policy describes:
- a. How the student may re-establish his or her eligibility to receive assistance
 - b. The basis on which a student may file an appeal (e.g. the death of a relative, an injury or illness of the student or other special circumstances);
 - c. Information the student must submit regarding why the student failed to make satisfactory academic progress, and what has changed in the student's situation that will allow the student to demonstrate satisfactory academic progress at the next evaluation;
10. If the institution does not permit a student to appeal a determination by the institution that he or she is not making satisfactory academic progress, the policy must describe how the student may re-establish his or her eligibility to receive assistance;
11. The policy provides for notification to students of the results of an evaluation that impacts the student's eligibility for Title IV, HEA program funds.
34 C.F.R § 668.34

Noncompliance:

OJC failed to provide an educational program that recognizes Constitution Day for both the 2010-2011 and 2011-2012 academic years.

OJC failed to provide information on how a student's Satisfactory Academic Progress (SAP) is affected by course incompletes, withdrawals, or repetitions, transfers of credit from other institutions or when entering a second program after successfully completing their first program.