January 30, 2014

Dr. Douglas Kristensen, Chancellor
University of Nebraska-Kearney
905 W. 25th Street
Kearney, NE 68849

UPS Tracking #
1Z A87 964 01 9298 6016

RE: Final Program Review Determination
OPEID: 00255100
PRCN: 201030727166

Dear Chancellor Kristensen:

The U.S. Department of Education's Clery Act Compliance Team issued a program review report on January 4, 2011 regarding the University of Nebraska-Kearney's (UNK; the University) compliance 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 Department's regulations at *34 C.F.R. §§ 668.41, 668.46, and 668.49*. The review also examined the University's compliance with the Drug-Free Schools and Communities Act (*DFSCA*) in *Section 20 U.S.C. §1011i* and the Department's regulations at *34 C.F.R. Part 86*. UNK's response was received on February 23, 2011. The original text of the program review report is incorporated into this Final Program Review Determination (FPRD). UNK's response and any supporting documentation submitted with the response are being retained by the Department and are available for inspection by UNK upon request. Please be advised that this FPRD and any supporting documentation may be subject to release under the Freedom of Information Act and may be provided to other oversight entities after this FPRD is issued.

Purpose:

Final determinations have been made concerning all of the findings identified during the program review. The purpose of this letter is to advise UNK of the Department's final determinations and to close the review. Please note that this FPRD contains several findings regarding UNK's failure to comply with the requirements of the *Clery Act*. Because a *Clery Act* finding does not result in a financial liability, such findings may not be appealed.

Due to the serious nature of these findings, this FPRD is being referred to the Administrative Actions and Appeals Service Group (AAASG) for consideration of possible adverse administrative action. Such action may include a fine and/or the limitation, suspension or termination of the eligibility of the institution to participate in the Title IV, HEA programs pursuant to *34 C.F.R. Part 668, Subpart G*. If AAASG initiates any such action, additional information about UNK's appeal rights and procedures for filing an appeal will be provided under separate cover.

Record Retention:

Records relating to the period covered by this program review must be retained until the later of resolution of the violations identified during the program review or the end of the regular retention period applicable to all Title IV-related records including campus crime documents under *34 C.F.R. § 668.24(e)*.

Thank you for the courtesy and cooperation shown to us throughout the program review process. If you have any questions about this FPRD or the program review process, please contact Ms. Cynthia A. Floyd-Davis at 202-377-4523.

Sincerely,

(b)(6); (b)(7(C)

James L. Moore, III
Compliance Manager
Clery Act Compliance Team

cc: Ms. Michelle Hamaker, Director, Police Department, UNK, hamakermr@unk.edu
Ms. Mary Sommers, Director of Financial Aid, UNK, sommersm@unk.edu
North Central Association – Higher Learning Commission
Nebraska State Department of Education

Enclosure:
Final Program Review Determination

START HERE
GO FURTHER
FEDERAL STUDENT AID

Prepared for:

University of Nebraska-Kearney

OPE ID: 00255100
PRCN: 20103 0727166

Prepared by:
U.S. Department of Education
Federal Student Aid
Clery Act Compliance Team

Final Program Review Determination
January 30, 2014

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A. Institutional Information

University of Nebraska-Kearney
905 W. 25th St.
Kearney, NE 68849-0001

Type: Public

Highest Level of Offering: Master/ Doctoral Degree

Accrediting Agency: North Central Association Commission on Accreditation and School Improvement

Current Student Enrollment: 6,478

% of Students Receiving Title IV: 65%

Title IV Participation, Per U.S. Department of Education Data Base (Postsecondary Education Participants System):

2008/2009 Award Year

Federal Pell Grant	$ 4,662,628
Federal Supplemental Educational Opportunity Grant (FSEOG)	$ 194,929
Federal Work Study (FWS)	$ 339,028
Federal Perkins Loan Program (Perkins)	$ 344,307
Federal Family Education Loan Program (FFEL)	$21,613,509

DL/FFEL Default Rate:	**2007**	**2.9%**
	2006	**1.5%**
	2005	**2.8%**
Perkins Default Rate:	**2007**	**6.0%**
	2006	**6.9%**
	2005	**2.9%**

Located in Kearney, NE the University of Nebraska-Kearney (UNK; the University) is a state supported institution of higher education and one of four main administrative units of the University of Nebraska system. UNK Police Services (UNKPS) has 7 sworn police officers who are commissioned law enforcement officers. UNKPS has officers on duty 24-hours a day, 365 days a year, and their jurisdiction includes all university owned, leased, or controlled property, and the streets adjoining and adjacent to the University.

B. Scope of Review

The U.S. Department of Education (the Department; ED) conducted a program review at the University of Nebraska Kearney from April 20-22, 2010. The review was conducted by the Clery Act Compliance Team.

The focus of the review was to evaluate UNK's compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (*Clery Act*). The *Clery Act* is included in §485(f) of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. §1092(f). The Department's implementing regulations are at 34 C.F.R. §§668.41-668.46. UNK was selected from a list of all institutions of higher education in Nebraska with sworn police departments. The review was not the result of any specific complaint or allegation of non-compliance. The review consisted of an examination of UNK's police incident reports, arrest records, and disciplinary files as well as policies and procedures related to the *Clery Act*. The review also included a comparison of the crime statistics submitted by UNK to the Department and reported to students and employees through the ASR. Staff interviews of institutional officials with *Clery Act* responsibilities were also conducted.

The Department's program review coincided with the Quality Assurance Review (QAR) that the Federal Bureau of Investigation (FBI)'s Criminal Justice Information Service (CJIS) Audit Unit conducted at UNK. The U.S. Department of Education partnered with the CJIS Audit Unit (CAU) to ensure accurate crime reporting on America's University campuses. The CAU reviewed law enforcement agencies' reporting practices, and audits crime statistics that are reported by the states through their participation in the Uniform Crime Reporting (UCR) program. The results of the QAR are shared with the Department for a comparative analysis of the annual security report data received from participating postsecondary institutions. The CAU reviewed a total of 36 Part I Offenses and 36 Part II Offenses that were recorded from January 1, 2009 through December 31, 2009.

The Department reviewed a sample of 79 campus police incident reports out of a universe of 359 and 43 disciplinary reports out of a universe of 237 for calendar year 2008. The files were selected randomly from a list of all incidents of crime reported to the UNKPS or other campus security authority and from a listing of all arrests and disciplinary referrals for law violations involving alcohol, illegal drugs, illegal usage of controlled substances, and weapons offenses during the same calendar year. Approximately 79 incidents were cross-checked against the daily crime log to ensure that crimes occurring within the patrol jurisdiction were entered properly on the log as required.

Disclaimer:

Although the review was thorough, it cannot be assumed to be all-inclusive. The absence of statements in the report concerning UNK'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 UNK of its obligation to comply with all of

the statutory or regulatory provisions governing the Title IV, HEA programs including the *Clery Act*.

C. Findings and Final Determinations

During the review, the following areas of noncompliance were noted. The program review findings identified in the Department's January 4th, 2011 program review report are in italics below. At the conclusion of each finding is a summary of UNK's response and the Department's Final Determination.

Finding 1: Inaccurate Reporting of Crime Statistics

Citation:

The Clery Act and the Department's regulations require institutions participating in the Federal Student Financial Aid programs under Title IV of the HEA to compile and publish statistics concerning the occurrence on campus of the following incidents: homicide, manslaughter, forcible and non-forcible sex offenses, robbery, aggravated assault, burglary, motor vehicle theft, and arson. In addition, institutions are required to disclose arrests and disciplinary actions related to violations of Federal or State drug, liquor and weapons laws. 34 C.F.R. § 668.46(c)(1). Further, institutions must provide a geographic breakdown of the statistics reported under paragraphs (c)(1) and (3) of this section according to the following categories: (i) On campus; (ii) Of the crimes reported on campus, the number of crimes that took place in dormitories or other residential facilities for students on campus; (iii) in or on a non-campus building or property; (iv) on public property. 34 C.F.R. § 668.46(c)(4).

Noncompliance:

UNK failed to provide a geographic breakdown of crime statistics as required by the Department's regulations for calendar years 2006, 2007, and 2008. The institution provided statistics in a format based on whom the crime was reported, rather than where the crime occurred. The purpose of providing the crime statistics by location allows students, employees, and the community to have an indication of where crimes are occurring on campus and in areas adjacent to it. In the case of the liquor, drug, and illegal weapons violations, the statistics do not indicate whether the violation resulted in an arrest or a referral. UNK instead provided a list of liquor, drug and illegal weapons violations categorized according to whom the crime was reported, rather then where the violations occurred. After further discussions with UNK police staff members, it appears that UNK has been reporting any crime that occurs in its parking lots as a crime on public property. Since UNK owns and controls its parking lots, and these lots are contiguous to the main campus, any crimes occurring in the parking lots should be included in UNK's on campus crime statistics.

Finally, UNK miscoded one burglary as a larceny (Incident #UN08000101). The narrative indicated that an unknown subject took several items from a Custodial Office. Because this

is an office, not an area of public access, it should have been coded as a burglary. Since it was not coded correctly, it was not included in the crime statistics in the institution's crime report. As a result, crime statistics disclosed for 2008 were underreported.

Required Action:

UNK must classify its crime statistics by the geographic location where the crime took place. It may continue to report according to whom the crime was reported, but only after the correct geographic classification is made. UNK must also report its statistics for liquor, drug, and illegal weapons possession according to the number that resulted in an arrest, and the number that resulted in a disciplinary referral. The University must also report all crimes that takes place on land it owns, including parking lots that are contiguous to the campus in the on campus category rather than in the public property category. Accordingly, UNK must revise its crime statistics for 2007 and 2008 to reflect these changes. Further, it must provide these revised statistics in its response to this preliminary program review report. In addition, UNK must ensure that the crime statistics for calendar year 2009 were reported correctly, and it must provide assurances to that affect in its response to this finding. Finally, UNK must also develop procedures to ensure that it reports its crime statistics to the Department correctly and in accordance with the Department's regulations. A copy of these procedures must be submitted in its response to this report.

University's Response:

In its response, UNK concurred with the finding by acknowledging that its presentation of campus crime statistics in the 2009 ASR was not consistent with *Clery Act* requirements and also differed from the data set that was submitted to the Department. University officials explained that crime statistics were broken down by who the crime was reported to rather than the geographical categories required by the *Clery Act*. In addition, liquor, drug, and weapon arrests were broken down by the type of violation rather than general category. Moreover, University listed the number of contacts made by public safety personnel and student conduct officials rather than the number of actual disciplinary referrals. UNK also stated that incidents of crime and arrests that occurred in university parking lots were counted twice.

UNK's response noted that the University has reformatted its crime statistics chart to ensure incidents and arrests are reported by geographic location. Further, UNK stated that it has eliminated the liquor, drug, and weapon violations types and will report only on the category. To ensure crime statistics were reported correctly for 2007, 2008, and 2009, the University reviewed all conduct and police reports for those years. UNK's response also included procedures to ensure the University collects crime statistics accurately going forward.

Final Determination:

Finding #1 of the program review report cited UNK for its failure to compile accurate campus crime statistics and to properly disclose them in the 2009 ASR. As a result of this violation, the University was required to revise its crime statistics for 2008 and 2007 and provide documentation showing the changes. In its response, the University stated its concurrence with the finding and asserted that all necessary corrective action was taken to address the violations identified during the program review. The Department reviewed copies of the revised crime statistics which accurately reflect the reporting requirements for calendar year 2009, 2008, and 2007. UNK's crime statistics were formatted to show geographic locations for criminal offenses, as well as the number of arrests and disciplinary referrals for liquor, drugs, and illegal weapons possession that were made during the review period. UNK also corrected geographic locations for crimes that occurred in parking lots owned by the University and in areas contiguous to the campus. Lastly, UNK's response included procedures and forms that were produced to help ensure accurate crime statistics reporting in the future.

The Department accepts UNK's response with supporting documents and the revisions the University made to its ASR and the Office of Post Secondary Education's (OPE) online campus crime statistics database. However, there is one statement in UNK's response that concerns the Department. On page two of its response, UNK states, "On a monthly basis the Director of Police and Parking Services will review Conducts reports for inclusion in the daily log and crimes statistics" (See UNK's response dated February 22, 2011 at Appendix B, page 2). The Department reminds UNK that a monthly review of reports will not suffice for properly maintaining a daily crime log. The Department requires an institution to make an entry or an addition to an entry to the crime log within two business days.

Based on the review team's analysis of the response and UNK's representations that it has addressed these violations and their underlying causes, the Department considers this finding to be closed.

Although the finding is now closed, UNK is reminded that the exceptions identified above constitute serious violations of the *Clery Act* that by their nature cannot be cured. UNK was required to initiate corrective actions and in so doing, has begun to remediate the conditions that led to these violations. The University has stated that it has brought its overall campus security program into compliance with the *Clery Act* as required by its Program Participation Agreement (PPA). Nevertheless, UNK officials must understand that the *Clery Act* is first and foremost a consumer protection law that is based on the premise that "to be forewarned is to be forearmed." A failure of the type documented in this case deprives students and employees of important campus security information, confuses users of the report, and needlessly complicates the process of comparing data from different institutions. For these reasons, the University is advised that such corrective 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.

Finally, the Department strongly recommends that UNK re-examine its policies and procedures periodically and revise them as needed to ensure that they continue to reflect current institutional policy and are in full compliance with the *Clery Act*.

As part of its annual policy review, institutional officials may wish to review the Department's "Handbook for Campus Safety and Security Reporting" (2011) for guidance on complying with the *Clery Act*. The Handbook is available online at: 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 2: Failure to Obtain Crime Statistics for Additional Locations

Citation:

Institutions must report statistics for the three most recent calendar years concerning the occurrence on campus, in or on non-campus buildings or property, and on public property of the following that are reported to local police agencies or to another campus security authority: criminal homicide, murder and non-negligent manslaughter, negligent manslaughter, sex offenses, robbery, aggravated assault, burglary, motor vehicle theft, arson, and arrests for liquor law violations, drug law violations, and illegal weapons possession. 34 C.F.R. § 668.46(c)(1). In complying with this requirement, an institution must make a reasonable, good faith effort to obtain the required statistics and may rely on the information supplied by a local or state police agency. 34 C.F.R. § 668.46(c)(9). An institution must comply with these requirements for each separate campus. 34 C.F.R. § 668.46(d)

Noncompliance:

UNK has three additional locations where instruction is offered to students: Grand Island, NE; North Platte, NE; and Columbia, NE. According to the University Registrar, some classes are offered at each of these locations. While the University does not own the property where instruction is offered, it should be collecting crime statistics for the time during which the property is being utilized and controlled by UNK.

Required Action:

The University must determine whether any of these locations constitute a separate campus, and if so, it must attempt to collect statistics from the local police and report these statistics separately for each separate campus. If the location does not constitute a separate campus, UNK must then include the crime statistics for that location in the non-campus category. UNK must collect data on crimes from the local jurisdictions for 2007 and 2008 and submit it with its response. In addition, UNK must ensure that the crime statistics for calendar year 2009 were reported correctly for these locations, and it must provide assurances to that affect in its response to this finding. Finally, UNK must develop procedures for requesting crime statistics from local police for these locations, and it must include those procedures with its response to this program review report.

University's Response:

In its February 22, 2011 response, UNK partially concurred with the finding and identified the following four locations that were utilized for educational purposes during the review period.

Central Community University Grand Island, NE	Kearney High School Kearney, NE
Lexington High School Lexington, NE	Mid-American Montessori Teachers Inst. Omaha, NE

Once it was determined that classes were offered at the alternative locations, UNK stated that it sent letters to each of the local law enforcement agencies of jurisdiction to request crime statistics for its locations. Copies of these letters along with the agencies' response and procedures for requesting crime statistics from local police are included with this response. UNK concurred that crimes that were reported as occurring at this locations during the time that the University controlled the buildings and/or properties should have been included in its campus crime statistics; however, UNK asserted that those crimes should be included in the main campus statistics, presumably in the non-campus property category.

Final Determination:

Finding # 2 cited UNK for its failure to report crime statistics for each separate campus and/or certain non-campus buildings and properties. As a result of this violation, the University was required to conduct an internal review to identify all locations where it offered courses or programs of study and to determine if the *Clery Act* separate campus and/or other geographical categories applied to such buildings and properties. In addition, UNK had to request crime statistics for these locations and disclose any incidents that were Clery-reportable.

In its response, UNK provided course schedules and other supporting documentation for the locations identified in the finding. The University also provided letters that were sent to the local law enforcement agencies of jurisdiction to request campus crime statistics. UNK also provided the responses from several agencies including the Grand Island, Lexington, and Omaha police departments that show the number of incidents of crime reported at UNK locations during calendar years 2009, 2008, and 2007. These responses do indicate that certain crimes including but not limited to a sex offense and an aggravated assault that were reported at the Grand Island location, were not included in the University's campus crime statistics. UNK's initial response did not include information requests or responses from the North Platte, NE and Columbus, NE police departments; however, in a supplemental response, the University was able to document that these locations were not utilized for educational purposes during the review period.

UNK also provided its new and revised policies and procedures that, if adhered to closely, should strengthen its campus crime statistics collection, compilation, and disclosure processes, especially regarding incidents of crime that are reported to CSAs who are not part of the UNKPS or local law enforcement. The Department is persuaded that UNK's procedures that were developed in response to the program review should improve is *Clery Act* compliance going forward.

As such, the Department accepts UNK's response and considers this finding to be closed. Although the finding is now closed, UNK is reminded that the exceptions identified above constitute serious violations of the *Clery Act* that by their nature cannot be cured. UNK was required to initiate corrective actions and in so doing, has begun to remediate the conditions that led to these violations. The institution has stated that it has brought its overall campus security program into compliance with the *Clery Act* as required by its PPA. Nevertheless, UNK is advised that such corrective measures cannot and do not diminish the seriousness of these violations nor do they eliminate the possibility that the Department will impose additional administrative and/or corrective actions as a result.

Finding # 3: Failure to Provide Notice Regarding ASR to Prospective Employees and Graduate Students

Citation:

The Department's regulations require that institutions provide notice to prospective students and prospective employees that include a statement regarding the report's availability, a description of its contents, and an opportunity to request a copy. If an institution chooses to provide its annual security report to current and prospective students and employees by posting the disclosure on an Internet Web site, the notice must include the exact electronic address at which the report is posted, a brief description of the report, and a statement that the institution will provide a paper copy of the report upon request. 34 CFR § 668.41(e)(4).

Noncompliance:

UNK failed to provide the required notice regarding the availability of the annual security report to both its prospective graduate students and prospective employees. The Department notes that UNK did meet the requirement of notifying prospective undergraduate students of the availability of its annual security report through a statement in the undergraduate catalog.

Required Action:

UNK must include a statement regarding the annual security report's availability to its prospective employees and its prospective graduate students. It must include documentation of the notification with its response to this program review report. The institution may choose to provide this notification on its website. However, if it does, it

must provide the exact web address for the report as well as a description of the report's content and the process to request a copy.

University's Response:

In its response, UNK concurred with the finding and stated that the longstanding method of notifying persons through the dissemination of postcards was not workable in an increasingly online environment. To address this violation, University officials stated that a conspicuous statement regarding the availability of the ASR was added to the Graduate Admissions and Human Resources web pages, which now serve as the primary means for interaction between the University and these constituents. The University provided the Department with copies of both web pages that included a description of contents and a link to the ASR at http://www.unk.edu/annual_security_report. Further, the University's response stated that it would continue to utilize other means as needed to directly notify prospective students and employees of the availability of the ASR.

Final Determination:

Finding # 3 of the program review report cited UNK for failing to actively notify prospective graduate students and employees about the availability of the 2009 ASR as well as reports for prior years. As a result of these violations, the University was required to develop and implement policies, procedures, and systems to ensure that all prospective members of the campus community were specifically put on notice about the University's ASR and were provided with a clear statement regarding its contents and instructions about how to obtain a copy. In its official response, UNK concurred with the finding and provided documentation showing remedial action. Specifically, the University revised its Admissions and Human Resources website to include a notice of the ASR's availability. Both websites display a description of the report's contents and links with precise web addresses for prospective graduate students and prospective employees.

Based on the review team's analysis of the response and UNK's representations that it has addressed these violations and their underlying causes, the Department considers this finding to be closed.

Although the finding is now closed, UNK 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" a violation of this type once it occurs. The requirement to actively notify prospective students and employees about the availability of the ASR is essential to achieving the campus safety goals of the *Clery Act*. Access to this information permits campus community members and their families to make well-informed decisions about where to work and study and empowers them to play a more active role in their own safety and security. UNK was required to initiate all necessary remedial measures and in doing so, has addressed the conditions that led to this violation. UNK has stated that it has brought its overall campus security program into compliance with the *Clery Act* as required by its PPA. Nevertheless, UNK is advised that such 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.

Finally, UNK officials are reminded to review the accuracy and completeness of its Drug and Alcohol Abuse Prevention Program (DAAPP) as required by the Drug-Free Schools and Communities Act (*DFSCA*) and Part 86 of the Department's General Administrative Regulations. FSA is now responsible for monitoring compliance with the *DFSCA*. Therefore, it is essential that the University makes sure that it has developed and implemented a comprehensive DAAPP, has actively distributed a materially-complete annual DAAPP disclosure, and that it has conducted substantive biennial reviews and has completed its biennial review reports on the proper schedule. For assistance or more information on the *Clery Act* and/or the *DFSCA*, please contact the Kansas City School Participation Division or the Clery Act Compliance Team.